

SUBCOMMITTEE NO. 2

Agenda

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Thursday, April 4, 2005
2 p.m. or Upon Adjournment
of Environmental Quality
Room 112

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0555 Secretary for Environmental Protection

Background. The California Environmental Protection Agency (Cal-EPA) is charged with implementing federal and state environmental quality standards. This is done through regulatory programs and incentive programs that seek to improve the quality of the environment for all Californians. The Cal-EPA is led by the Secretary for Environmental Protection and the agency oversees the following boards, departments, and offices.

Boards:

- Air Resources Board
- Integrated Waste Management Board
- State Water Resources Control Board
(including the nine Regional Water Quality Control Boards)

Departments:

- Department of Pesticide Regulation
- Department of Toxic Substances Control

Offices:

- Office of Environmental Health Hazard Assessment

Governor's Budget. The Governor's budget proposes \$8.5 million to support the Secretary for Environmental Protection. This is approximately the same level of funding that is estimated for expenditure in the current year. General Fund support for this office is proposed to remain about the same as the current year.

| Summary of Expenditures | | | | |
|--|----------------|----------------|--------------|-------------|
| (dollars in thousands) | 2004-05 | 2005-06 | \$ Change | % Change |
| Type of Expenditure | | | | |
| Administration | \$8,347 | \$8,549 | \$202 | 2.4 |
| Unallocated Reduction | 0 | -21 | -21 | 0.0 |
| Total | \$8,347 | \$8,528 | \$181 | 2.2 |
| Funding Source | | | | |
| General Fund | \$1,325 | \$1,321 | -\$4 | -0.3 |
| Special Funds | 2,740 | 3,816 | 1,076 | 39.3 |
| <i>Budget Act Total</i> | <i>4,065</i> | <i>5,137</i> | <i>1,072</i> | <i>26.4</i> |
| Reimbursements | 2,021 | 1,000 | -1,021 | -50.5 |
| State Water Quality Control Fund | 111 | 117 | 6 | 5.4 |
| Environmental Enforcement and Training Account | 2,000 | 2,124 | 124 | 6.2 |
| Environmental Education Account | 150 | 150 | 0 | 0.0 |
| Total | \$8,347 | \$8,528 | \$181 | 2.2 |

1. Cal-EPA Enforcement Initiative

Background. In December 2004, the Sacramento Bee reported that no fines or injunctions had been issued on the Hilmar Cheese Factory despite 16 years of violations of state rules protecting groundwater. Late in January, the Central Valley Regional Water Quality Control Board assessed a \$4 million penalty on the factory to address these violations. This incident helped to raise awareness concerning the shortcomings of the state's enforcement activities.

Cal-EPA Enforcement Initiative. The Cal-EPA Secretary is currently implementing an enforcement initiative to help improve the state's enforcement efforts. The Secretary has reported that they are working to improve their management of information in order to better prioritize their enforcement activities based on the greatest risk to the environment. The Secretary has also indicated that the following efforts are underway to improve enforcement of the state's environmental laws:

- The nine regional water boards are working on a statewide approach for prioritization of enforcement actions and the State Water Board will be reviewing regional board enforcement activities on an annual basis.
- The Office of the Secretary is developing a centralized agency-wide complaint tracking system.
- The nine regional water boards are transitioning to an electronic data filing system that will enable automated compliance checking and the development of a "compliance report card" for dischargers.
- The Secretary is also re-evaluating the State Water Board's role with respect to enforcement.

The administration also indicates that it has put forward a legislative package to improve enforcement.

Staff Recommendation. Staff recommends that the Subcommittee request that the administration report on how it plans to finance its enforcement initiative and to identify specific staffing and funding needed to implement the enforcement initiative effectively.

2. Climate Change Activities

Background. Over the past 50 years, the Western U.S. has been warming, in large part, apparently, due to global warming trends from increases in the global greenhouse gas effect. Climate models are mixed regarding how this will impact the amount of precipitation the state will receive in the future. However, they all agree that there will be increased variability in our weather patterns and stream levels will increase. These impacts alone will have real effects on the state, including impacts on water supply, wildlife, and public safety.

In the 2004-05 budget trailer bill, the Secretary for Cal-EPA was designated as the lead for the state's climate change activities.

California Climate Coordinating Council. The administration has indicated that it has established a California Climate Coordinating Council, chaired by the Secretary of Cal-EPA.

This council has been meeting monthly and has developed “targets” related to addressing climate change. These targets have been submitted to the Governor for review. The administration has also indicated that they are continuing to implement the greenhouse gas emission statute from 2002 (AB 1493, Pavley). The administration is also exploring other options related to reducing greenhouse gas emissions. The state has also joined “The Climate Group,” which is an international collaboration of government and multi-national businesses working on strategies to address climate change.

Staff Recommendation. Staff recommends that the Subcommittee direct the Office of the Secretary to report to the subcommittee on the universe of state activities being conducted as part of the California Climate Coordinating Council.

3. Reducing Air Emissions by 50 percent by 2010

Background. The Governor has set, as one of his goals, reducing air emissions by 50 percent by 2010. In 2004, legislation was enacted to provide approximately \$80 million annually to the Carl Moyer program to help reduce diesel emissions. Legislation also enabled local governments to raise up to \$55 million annually to help reduce emissions. In addition, the state is continuing to implement State Implementation Plans to reduce ozone and particulate matter in federal non-attainment areas in order to comply with federal law.

Growing Sources of Air Emissions. Despite efforts to reduce air emissions there are growing sources of air pollution that are not being addressed. Air pollution related to goods movement at our ports is forecast to grow at double digit rates in the future as California’s ports continue to grow in importance as the gateway of imported goods from Asia. In addition, NAFTA now allows for free commercial travel between California and Mexico. The truck fleet from Mexico is significantly older and dirtier than the U.S. fleet and will also result in a growing source of air emissions.

Staff Recommendation. Staff recommends that the Subcommittee direct the administration to report back on what they are doing to address the growing sources of emissions cited above.

4. Environmental Protection Indicators for California Update—Informational Item

Background. The administration created the Environmental Protection Indicators for California (EPIC) Project in 2000-01 to establish and implement a process for developing environmental indicators. Chapter 664, Statutes of 2003 (AB 1360, Steinberg), established this program in law. Environmental indicators are scientifically based tools used to track changes that are taking place in the environment. For example, the “number of days over the state ozone standard” and the “number of coastal beach postings and closings” are environmental indicators that can be used to track environmental progress.

Governor’s Budget. The budget does not contain any funds specifically for the EPIC program. However, the Office of Environmental Health Hazard Assessment (OEHHA) has invested a

relatively small level of effort (0.1 personnel-year) in updating a select number of indicators. At the beginning of February 2005, OEHHA released an updated version of 43 indicators. These indicators were chosen because they are supported by already existing ongoing data collection.

Some of the budget change proposals submitted as part of the 2005-06 budget included reference to specific environmental indicators that they addressed.

Indicators Need Refinement. A supplemental report of the 2003 budget act required a progress report on the use of indicators in two specified pilot projects. The two pilot projects are the Carl Moyer Program and the Clean Beaches Program. The LAO finds that the progress reports on these two projects reveal that the consideration of indicators in the development and implementation of environmental protection programs has been important in evaluating program effectiveness. Nevertheless, the LAO finds that there has been little application of environmental indicators in the budget development process. The LAO recommends that the administration continue to further refine existing indicators to permit more specificity in the evaluation of environmental outcomes as a result of a particular program. This will enable the administration and the Legislature to utilize these indicators in prioritizing funds in the budget to the most effective programs. The LAO also recommends that the Legislature specify environmental indicators when developing new programs and initiatives so that progress made by new environmental programs can be tracked and measured.

Questions.

- What indicators does the administration plan to focus on in the budget year?
- What data gaps exist that prohibit the further development and refinement of additional environmental indicators?

5. Cal-EPA Consolidation of Administrative Functions— Informational Item

Background. As part of the 2004 trailer bill to the budget, legislation was enacted directing the Secretary of Cal-EPA to consolidate selected administrative functions at all of the boards, departments, and offices within the agency. Functions eligible for consolidation include procuring basic office supplies, information technology, collecting fees, and generic human resources functions that support state personnel. This consolidation was to result in various special fund savings.

Progress in Consolidation of Administrative Functions. The administration has indicated that it is working on consolidating procurement of some basic office supplies. The administration has not indicated whether budget savings have been achieved from this consolidation.

Questions.

- What activities are currently being pursued to further consolidate administrative functions and reduce costs?
- Are statutory changes needed to enable the administration to facilitate cost-saving measures outlined in the 2004 trailer bill?

3900 Air Resources Board

Background. The Air Resources Board (ARB), along with 35 local air pollution control and air quality management districts, protects the state's air quality. The local air districts regulate *stationary sources* of pollution and prepare local implementation plans to achieve compliance with federal and state standards. The ARB is responsible primarily for the regulation of *mobile sources* of pollution and for the review of local district programs and plans. The ARB also establishes air quality standards for certain pollutants, administers air pollution research studies, and identifies and controls toxic air pollutants.

Governor's Budget. The Governor's budget proposes \$237 million to support the ARB in 2005-06. This proposal is a 42 percent increase from the current year primarily due to the expansion of the Carl Moyer program following legislation enacted in 2004 and augmentations to various air programs to reduce particulate emissions and NAFTA related pollution. General Fund support for ARB remains relatively unchanged in the budget year.

| Summary of Expenditures | | | | |
|--|----------------|----------------|---------------|-------------|
| (dollars in thousands) | 2004-05 | 2005-06 | \$ Change | % Change |
| Type of Expenditure | | | | |
| Mobile Source | \$118,247 | \$183,946 | \$65,699 | 55.6 |
| Stationary Source | 38,842 | 42,797 | 3,955 | 10.2 |
| Subvention | 10,111 | 10,111 | 0 | 0.0 |
| Administration | 11,481 | 11,571 | 90 | 0.8 |
| <i>less distributed administration</i> | <i>-11,481</i> | <i>-11,571</i> | <i>-90</i> | <i>0.0</i> |
| Unallocated Reduction | 0 | -34 | -34 | 0.0 |
| Total | \$167,200 | \$236,820 | \$69,620 | 41.6 |
| Funding Source | | | | |
| General Fund | \$2,224 | \$2,211 | -\$13 | -0.6 |
| Special Funds | 149,201 | 218,133 | 68,932 | 46.2 |
| <i>Budget Act Total</i> | <i>151,425</i> | <i>220,344</i> | <i>68,919</i> | <i>45.5</i> |
| Federal Trust Fund | 11,826 | 12,006 | 180 | 1.5 |
| Reimbursements | 3,950 | 4,470 | 520 | 13.2 |
| Total | \$167,201 | \$236,820 | \$69,619 | 41.6 |

1. Carl Moyer Air Quality Program

Background. The Carl Moyer program has provided a means for reducing NO_x (nitrogen oxide) emissions and PM (particulate matter) emissions from heavy-duty diesel engines. The program buys near-term emission benefits through a variety of mechanisms, including funding to retrofit equipment and provide funding for alternatives to diesel fuels. Over the program's first six years, the program reduced 18 tons per day of NO_x and about 1 ton per day of PM at the cost of about \$3,000 per ton of NO_x reduced. For the most part, the state sets up criteria for the Carl Moyer program and local air districts actually distribute funds based on the cost effectiveness of the projects submitted.

As part of the 2004-05 budget, the Legislature and Governor established an ongoing funding source for the Carl Moyer program. Approximately \$61 million annually was provided for the Carl Moyer program through an increase in the smog check exemption fee. In addition to the fee increase, legislation was implemented that extends from four to six the number of years a new car is exempt from smog check requirements.

In addition, the Legislature also enacted Chapter 707, Statutes of 2004 (AB 923, Frommer) that increased the tire fee to provide additional revenues to support the Carl Moyer program. The tire fee was increased by \$0.75 to \$1.75 per tire until 2007 at which time the fee will be adjusted to \$1.50 per tire. This legislation also expanded the scope of the Carl Moyer program to include more pollutants, different sources of pollution, and new types of projects. This legislation also enabled local air districts to approve \$2 increases to motor vehicle registration fees. These funds would also be used to support the Carl Moyer program and could potentially contribute an additional \$55 million to the program annually.

Governor's Budget. The Governor's budget proposes approximately \$25 million funded by the increase in the tire fee (deposited in the Air Pollution Control Fund) to implement AB 923. This includes \$23 million for grants, approximately \$1 million to support 12 new positions, and \$500,000 in contract funds. The additional contract funds are proposed to support public outreach to environmental justice communities and technical assistance. The 12 new positions are requested to develop new programs for agricultural sources, fleet modernization, and to develop criteria for the inclusion of reactive organic gasses and toxic particulate matter into the expanded Carl Moyer program. In addition, the administration proposes to retain 10 percent of the Carl Moyer grant funds for a statewide initiative related to goods movement.

Timeline for Implementation. The administration adopted interim guidelines to implement AB 923 in January 2005. These guidelines covered pollutants already covered by the Carl Moyer program. The administration plans on releasing new guidelines for the additional pollutants in November 2005. The ARB is also currently reviewing funding protocols for new agricultural sources (including non-mechanized projects) and fleet modernization.

Current Year Revenues Not Reflected. The LAO finds that the budget does not account for the receipt of a projected \$12 million of tire fee revenues that will be collected in the current year to support the Carl Moyer program. The LAO recommends that the administration include a plan for expenditure of the \$12 million in current-year revenues currently unaccounted for in the January budget proposal.

Staff Recommendation. Staff recommends that the Subcommittee request that the administration report on its plans for expending the \$12 million in tire fee revenues not accounted for in the budget year.

2. Mobile Source Review Program Augmentation

Background. The ARB is responsible for developing statewide programs and strategies for reducing the emission of smog-forming pollutants and other toxic air contaminants by mobile sources. These include both on and off-road sources, including passenger cars, motorcycles, trucks, busses, heavy-duty construction equipment, recreational vehicles, marine vessels, lawn and garden equipment, and small utility engines.

Governor's Budget. The Governor's budget proposes increasing support for the mobile source review program by \$3.5 million funded by the Air Pollution Control Fund (\$1.7 million), the Motor Vehicle Account (\$1.4 million) and reimbursements (\$444,000). This includes \$1.2 million to support 15 additional positions and \$1.7 million to purchase additional emission analyzer equipment. This augmentation will generally support increased workload associated with the following mobile source review programs:

- **Mobile Source Certification and Testing Upgrades.** This program certifies all new vehicles and engines (both on-road and off-road applications) for emissions compliance. Over the past 10 years, the number of mobile source categories certified by the ARB has doubled due to the inclusion of off-road applications. Three additional positions are requested to address the increase in off-road applications. In addition, two positions are requested to address on-road certification activities to increase the timeliness of the review. In addition, \$1.2 million is proposed to purchase a four wheel drive dynamometer that will allow ARB to test these vehicles to determine compliance with state laws. Also, \$500,000 is proposed to replace an outdated emissions analyzer system in ARB's existing emission analyzing equipment.
- **Vapor Recovery Rule Development and Certification.** The ARB evaluates and tests systems that recover the gasoline vapors generated by fueling vehicles at a service station. In 2000, the board adopted enhanced vapor recovery regulations for underground storage tanks. The board is now working on enhanced vapor recovery regulations for aboveground storage tanks and is requesting two additional positions to support this effort. In addition, the administration is requesting another two positions to continue implementation of the enhanced vapor recovery regulations for underground storage tanks.
- **Small Off-Road Engine Certification.** The ARB regulates emissions from small off-road engines such as lawn, garden, and other maintenance utility equipment. In 2003 new regulations were adopted to control evaporative emissions from these engines during both use and non-use periods. Manufacturing is set to begin complying with new evaporative emission controls in 2006 and will require ARB component and system certification to sell their products in California. One additional position is requested to cover additional workload and prevent delays related to certification and additional equipment is proposed to facilitate testing.

- **Control Measures for Cargo Tanks.** The ARB is responsible for ensuring the reduction of volatile organic compound emissions from gasoline cargo tanks. The ARB committed to pursuing a control strategy in 2003, but regulations are still being developed for this emissions source. Additional support will fund two additional positions to continue work to determine emissions from cargo tank components, study control measures, develop and test procedures, and prepare draft regulations to be implemented by 2009.
- **Portable Equipment Registration Programs.** The ARB has a statewide portable equipment registration program that, once registered, allows portable engines and equipment to operate anywhere in the state. The board amended regulations related to this program in 2004, which resulted in an increase in the number of engines in the program. Additional processing fees collected from these engines fully support an increase of three positions to support additional applications to the program.

Relationship to the State Implementation Plan (SIP). Federal clean air laws require areas with unhealthy levels of ozone and particulate matter to have a SIP for reaching national attainment levels by certain dates. Several of these programs proposed for additional funding will result in emission reductions that are needed to meet attainment under the SIP. Specifically, several air districts are counting on emission reductions resulting from the vapor recovery program to reach attainment under the SIP. The increased standards in the small off-road engine program are defined measures in the SIP and reductions related to cargo tanks are also required to meet emission reduction goals in the SIP.

Staff Recommendation. No issues have been raised with this request and staff recommends that the Subcommittee approve as budgeted.

3. NAFTA – Free Commercial Vehicle Travel

Background. On June 7, 2004 the U.S. Supreme Court ruled that a full environmental assessment of the impacts of implementing the transportation provisions of NAFTA was not required. Consequently, free commercial travel will be expanded beyond the current 20 mile commercial zone. An additional 35,000 heavy-duty commercial vehicles are expected to cross into the U.S. from Mexico daily. California's crossings are expected to experience 25 to 40 percent of this increased traffic. Since Mexico's truck fleet is considerably older than the U.S. fleet, this could result in an increase of 50 tons per day of NOx and 2.5 tons per day of PM. These increases were not accounted for as part of the problem when the state developed its state implementation plan (SIP).

Governor's Budget. The Governor's budget proposes \$3.7 million from the Motor Vehicle Account (\$2.4 million) and the Air Pollution Control Fund (\$1.3 million) to augment the state's Heavy-Duty Vehicle Inspection Program (HDVIP) enforcement along the California-Mexico border and the Port of Long Beach. This includes \$1.2 million to support 16 new positions, \$750,000 for modification of California Highway Patrol (CHP) border inspection sites, \$600,000 for other one-time equipment purchases, and \$400,000 for a CHP enforcement contract. Positions will be allocated to the following activities:

- **Field Inspection.** Approximately 11 new positions will be allocated to field inspection, which will triple the enforcement presence at the California-Mexico border. Positions will be allocated in the following manner:
 - **Otay Mesa and Calexico Border Crossings** – 4 positions;
 - **Winterhaven California-Arizona Border Crossing** – 2 positions;
 - **Tecate Border Crossing** – 2 positions;
 - **Port of Long Beach** – 2 positions; and
 - **Field Supervisor** – 1 position.
- **Violations.** Three new bilingual positions are proposed to address the projected increase in violations that will require processing. Each violation must be legally served to the registered vehicle owner and monitored for 45 days to ensure it is cleared (penalty paid, vehicle repaired, etc.).
- **Delinquent Citations.** Two new positions are proposed to support additional delinquent citations projected. Currently 90 percent of the border violations become delinquent while only 1 position supports the collection of delinquent citations. In addition to the increased positions, the ARB proposes to increase its contract with CHP by \$400,000 to remove delinquent vehicles from the road.

Actual Impact of Free Commercial Travel Unknown. There is very little known about what the real environmental impact will be as a result of allowing free commercial travel between the U.S. and Mexico. Therefore, it is difficult to determine whether the program augmentations requested are adequate in addressing this growing source of pollutants. The Legislature may want to re-evaluate this program after more information is known about the increase in emissions resulting from free commercial travel between the U.S. and Mexico.

Relationship to the State Implementation Plan (SIP). The emission increases related to free commercial travel between the U.S. and Mexico were not accounted for when developing the SIP for reaching federal attainment levels by 2015. Without additional action by the state, these increased emissions will make it more difficult for Southern California to meet the attainment level deadlines required by the federal government.

Federal Government Should Contribute. Since the emission increases resulting from free commercial travel between the U.S. and Mexico are the result of federal decisions related to NAFTA, the federal government should be required to help fund activities to mitigate the environmental impacts of this decision. The federal government is currently not contributing funds to help address this problem.

Staff Recommendation. Staff recommends that the Subcommittee approve the budget proposal and adopt supplemental reporting language to require the administration to report to the Legislature by January 10, 2006 on the actual increases in emissions resulting from free commercial travel between the U.S. and Mexico. This report should also include information about the level of emission reductions achieved by HDVIP operations along the border and state actions to maximize federal funds available to address the environmental impacts of free commercial travel.

4. State Implementation Plan for PM2.5

Background. California has the only two areas in the nation that exceed both the federal 24-hour and annual PM2.5 standards. These areas are the South Coast Air Basin and the San Joaquin Valley Air Basin. The state is currently working on state implementation plans to address these non-attainment areas. These plans are due to the U.S. Environmental Protection Agency by the end of January 2008. The federal standards must then be attained between 2010 and 2015. Failure to submit timely plans will result in potential federal sanctions and the loss of billions in federal highway funds.

Governor's Budget. The Governor's budget proposes \$8.6 million from the Motor Vehicle Account (\$3 million) and the Air Pollution Control Fund (\$5.6 million). This includes \$1.7 million to support 21 new positions, \$4 million for testing and lab equipment, and \$1.8 million for contracts. The increase in funding will be focused on developing state regulations to control PM2.5 and the development of the State Implementation Plan for PM2.5.

- **State Regulations** – The administration has identified that state regulations need to be developed to reduce diesel exhaust from private long-haul and regional trucking, private off-road construction equipment, and agricultural tractors and other equipment. Other regulatory efforts will include development and implementation of airborne toxic control measures for other particulate toxic air contaminants such as lead and hexavalent chromium. The administration proposes allocating 5 positions for these activities and \$200,000 in contracts for testing and verification of diesel control technologies.
- **State Implementation Plans** – The administration has proposed a three pronged approach to developing the state implementation plan for PM2.5. This includes emissions testing, monitoring, and modeling and data analysis. The administration proposes allocating support for these activities in the following manner:
 - **Emissions Testing** – The administration has proposed funding 12 positions to do emissions testing for PM2.5 and ultra-fine particles from gasoline-powered small engines, light and medium duty gasoline vehicles, and light duty diesel vehicles. Funds to test heavy-duty diesel vehicles were appropriated in previous budgets. In addition, \$3.1 million in equipment is proposed to upgrade equipment that measures PM2.5 size distribution and chemical composition of vehicle emissions. Also, \$1 million in contracts is proposed to fund testing of PM2.5 size distribution and chemical composition of emissions from other non-mobile sources.
 - **Monitoring** – The administration is proposing to allocate 1 position and \$900,000 for equipment to enable ARB to collect and analyze chemical markers for wood smoke. Recent technological advances have enabled improved source identification, including identifying residential wood smoke.
 - **Modeling and Data Analysis** – The administration is proposing to allocate 3 positions and \$600,000 in contract funding to better understand the sources of PM2.5 and develop a strategy for reducing these emissions. The contract funding will support the collection of meteorological data as well as model formulations for allocating and tracking emissions spatially.

Relationship to the State Implementation Plan (SIP). It is not clear that these activities are adequate for addressing PM2.5 emissions, especially given the growing sources at the ports and increased NAFTA related commercial travel. Without information on how the state is addressing

these growing concerns, it is difficult to determine whether enough is being done to meet the deadlines for meeting federal air attainment levels.

Staff Recommendation. Staff recommends that the Subcommittee approve this budget proposal.

3910 Integrated Waste Management Board

Background. The California Integrated Waste Management Board (CIWMB), in conjunction with local agencies, is responsible for promoting waste management practices aimed at reducing the amount of waste that is deposited in landfills. The CIWMB administers various programs that promote waste reduction and recycling, with particular programs for waste tire and used oil recycling. The board also regulates landfills through a permitting, inspection, and enforcement program that is mainly carried out by local enforcement agencies that are certified by the board. In addition, CIWMB oversees the cleanup of abandoned solid waste sites.

Governor's Budget. The Governor's budget proposes \$190 million to support CIWMB in the budget year. This is approximately 27 percent more than in the current year due to full-year costs associated with the E-Waste Recycling program. The board does not receive any General Fund support.

| Summary of Expenditures | | | | |
|--|----------------|----------------|---------------|-------------|
| (dollars in thousands) | 2004-05 | 2005-06 | \$ Change | % Change |
| Type of Expenditure | | | | |
| Permitting | \$153,836 | \$195,072 | \$41,236 | 26.8 |
| Administration | 8,835 | 8,924 | 89 | 1.0 |
| <i>less distributed administration</i> | -8,835 | -8,924 | -89 | 0.0 |
| <i>less loan repayments</i> | -4,297 | -4,667 | -370 | 0.0 |
| Total | \$149,539 | \$190,405 | \$40,866 | 27.3 |
| Funding Source | | | | |
| Special Funds | \$145,961 | \$189,711 | \$43,750 | 30.0 |
| Bond Funds | 140 | 142 | 2 | 1.4 |
| <i>Budget Act Total</i> | <i>146,101</i> | <i>189,853</i> | <i>43,752</i> | <i>29.9</i> |
| Special Deposit Fund | 3,235 | 345 | -2,890 | -89.3 |
| Reimbursements | 204 | 207 | 3 | 1.5 |
| Total | \$149,540 | \$190,405 | \$40,865 | 27.3 |

1. Implementation of Electronic Waste Recycling Program

Background. In order to address the growing problem of electronic waste, the Legislature adopted Chapter 526, Statutes of 2003 (SB 20, Sher), which instituted a comprehensive system for the recycling and safe disposal of certain electronic devices. Subsequent legislation—Chapter

863, Statutes of 2004 (SB 50, Sher)—required the Board of Equalization (BOE) to collect the electronic waste recycling fee.

Governor's Budget. The administration proposes converting 6 limited term positions to permanent positions funded by \$476,000 from the E-Waste fund. The total funding proposed for administration of the E-Waste program at the Waste Board is \$1.4 million.

Total Administrative Costs. Total administrative costs associated with the E-Waste program are \$8.2 million. This accounts for about 12 percent of the total E-Waste program total revenues. Administrative costs are allocated in the following way:

- Board of Equalization - \$5.7 million
- Waste Board - \$1.4 million
- Department of Toxic Substance Control - \$651,000
- Department of Finance - \$500,000

Board of Equalization Costs Seem High. The LAO has raised concerns regarding the cost estimates BOE has proposed for administering the E-Waste fee. The BOE has cited that the number of retailers and the diversity of products covered under this law have led to significant complexity in implementation. Nevertheless, the LAO finds that the BOE's collection efforts for similar fees, such as the tire recycling fee (also collected at the retail level) are considerably lower than the administrative costs proposed here. The LAO has recommended that the board provide backup regarding its cost estimates. This issue will be heard by Budget Subcommittee No. 4, but relates to the overall implementation of the E-Waste program.

Staff Recommendation. Since the BOE's budget is under the jurisdiction of Budget Subcommittee No. 4, staff recommends that the Subcommittee direct staff to coordinate on the evaluation of BOE's proposal and appropriate recommendation. Staff also recommends approving the administration's proposal to convert six limited-term positions to permanent positions for ongoing support of the E-Waste program.

2. Elimination of the Waste Board

Background. The Waste Board has been proposed for elimination in several reorganizations over the past several years. Most recently it was included in the Governor's Reorganization Plan No. 1 (GRP) on reforming California's boards and commissions. (This plan has been retracted by the Governor.) The board consists of six full-time board members. Four of the members are appointed by the Governor, one is appointed by the Senate Committee on Rules, and one is appointed by the Speaker of the Assembly. These members are appointed to staggered four year terms.

Governor's Budget. The Governor's budget does not, at this time, propose to eliminate the Waste Board. However, the administration has indicated that it is continuing work on a Cal-EPA reorganization proposal that may be released soon.

Elimination of the Board. The LAO recommends the elimination of the Waste Board as part of a proposal to consolidate the state's recycling programs under one Department of Recycling and

Waste Prevention under Cal-EPA (see next budget issue for more information). Furthermore, the LAO recommends transferring remaining functions related to solid waste management at the board to an expanded Department of Toxic Substances Control (DTSC). The LAO cites the following advantages for consolidating the Waste Board's waste management activities with DTSC's activities.

- Enhanced protection of the environment and public health by providing centralized management of toxic substances and solid and hazardous waste.
- Consolidated permitting and enforcement activities would improve the effectiveness and efficiency in licensing businesses seeking landfill permits.
- Further streamlining of the permitting process and adoption of best practices, such as DTSC's requirement that financial assurances associated with permits are reevaluated when permits are renewed.

Public Participation. Board structures generally provide a transparent and accessible way for the public to participate in the implementation of state laws. The LAO finds that the Waste Board has provided the opportunity for valuable public input in the review of (1) local jurisdictions progress in reaching waste diversion requirements and (2) the permitting of landfills.

However, the LAO also finds that DTSC has been effective in seeking public input and participation despite its structure as a department. The DTSC public participation specialists hold over 350 meetings, hearings, briefings, and panel discussions annually. The DTSC also produces hundreds of public notices and fact sheets to keep residents informed of their opportunities to get involved in the process. The LAO finds that, in this case, there is sufficient evidence that DTSC's public participation process would be effective for public input related to activities currently handled by the Waste Board.

Budget Savings. The LAO estimates that there would be approximately \$2 million in special fund savings from the elimination of the Waste Board. This savings is a result of eliminating board salary, staff, and travel expenses. The LAO estimates that there could be further administrative savings that result from consolidating program activities.

Staff Recommendation. Staff recommends that the Subcommittee leave this issue open pending receipt of the reorganization plan from the administration and direct staff to evaluate other potential impacts from eliminating the board.

3. Consolidation of Recycling Programs

Background. The state's recycling responsibilities are divided between the Department of Conservation's (DOC's) Division of Recycling and the Waste Board. The DOC oversees the beverage container recycling program and the Waste Board oversees all other solid waste and hazardous waste recycling programs.

Governor's Budget. The Governor's budget does not propose a reorganization of the state's recycling activities. However, the administration has indicated that it is continuing work on a Cal-EPA reorganization proposal that may be released soon.

LAO Finds Coordination Could Improve Effectiveness. The LAO recommends consolidating the state's recycling activities into a new Department of Recycling and Waste Prevention. The LAO cites that there are many missed opportunities related to having two separate entities managing the state's recycling programs. Specifically, the LAO finds that coordination of the state's recycling programs would improve the effectiveness of its efforts related to: public outreach and education, recycled material market development, and general sharing of technical recycling expertise. Examples of how coordination could improve the management of the state's recycling activities include the following:

- The DOC is currently developing a bar and restaurant recycling program for bottles and cans. However, the LAO finds that this effort misses opportunities to develop a more comprehensive strategy for reducing waste from many different sources at restaurants and bars.
- Currently, both DOC and the Waste Board have programs to develop and foster economic markets for similar recycled materials. These programs set funding priorities independently. The LAO finds that the state's efforts may be more effective if the state developed a single set of priorities for recycled market development.
- The LAO finds that the Waste Board could have better capitalized on the expertise of DOC in establishing the state's E-Waste Recycling program. The DOC is very familiar with the flow of payments among parties in the recycling chain that best serves to encourage recycling, while the Waste Board's focus on recycling has generally had a more regulatory approach.

Staff Recommendation. Staff recommends that the Subcommittee leave this issue open pending receipt of the reorganization plan from the administration and direct staff to evaluate all impacts from consolidating the state's recycling programs.

4. Environmental Education Program

Background. The Education and Environment Initiative was created by Chapter 665, Statutes of 2003 (AB 1548, Pavley), which mandated school boards to include environmental principles in their instructional materials. This initiative was started with the enactment of Chapter 926, Statute of 2001 (AB 373, Torlakson), which first established an office in the Waste Board charged with the development and implementation of an environmental education program for elementary and secondary schools in the state. Thus far, the administration has completed the first two phases of the Education and Environment Initiative, which include the development of environmental principles and concepts and the alignment of the environmental principles and concepts to the California Academic Content Standards.

Governor's Budget. The administration requests \$3.5 million and 5.5 permanent positions to implement the next two phases of the Education and Environment Initiative. These phases include planning for model curriculum and curriculum development. Of the \$3.5 million requested in the budget year, \$3.3 million is from the Integrated Waste Management Account and \$200,000 is from the Waste Discharge Permit Fund. The administration also proposes to make the appropriation of these funds contingent on the enactment of clean-up legislation that

would repeal the mandate on school boards to include environmental principles in instructional materials.

LAO Finds Funding Proposal Needs Diversified. The Education and Environment Initiative is broad in scope, including curriculum related to the air, water, energy, pest management, forestry and more. Nevertheless, funding for this program is primarily from tipping fees on the disposal of waste at landfills. The LAO finds that the proposed funding mix does not reflect the broad scope proposed to be covered by the Education and Environment Initiative.

Staff Recommendation. Staff recommends that the Subcommittee direct staff, the LAO, and the Office of the Secretary at Cal-EPA to develop options for funding this activity from more diversified funding sources.

3930 Department of Pesticide Regulation

Background. The Department of Pesticide Regulation (DPR) administers programs to protect the public health and the environment from unsafe exposures to pesticides. The department (1) evaluates the public health and environmental impact of pesticides use; (2) regulates, monitors, and controls the sale and use of pesticides in the state; and (3) develops and promotes the use of reduced-risk practices for pest management. The department is funded primarily by an assessment on the sale of pesticides in the state.

Governor's Budget. The Governor's budget proposes \$62 million to support DPR in 2005-06, which is approximately the same level of expenditures as in the current year. The department does not receive any General Fund support.

| Summary of Expenditures | | | | |
|--|-----------------|-----------------|----------------|------------|
| (dollars in thousands) | 2004-05 | 2005-06 | \$ Change | % Change |
| Type of Expenditure | | | | |
| Registration and Health Evaluation | \$17,126 | \$18,117 | \$991 | 5.8 |
| Pest Management and Environmental Activities | 42,992 | 43,780 | 788 | 1.8 |
| State-Mandated Local Programs | 1 | 157 | 156 | 15600.0 |
| Administration | 8,342 | 8,234 | -108 | -1.3 |
| <i>less distributed administration</i> | <i>-8,342</i> | <i>-8,234</i> | <i>108</i> | <i>0.0</i> |
| Total | \$60,119 | \$62,054 | 1,935 | 3.2 |
| Funding Source | | | | |
| General Fund | \$1 | \$0 | -1 | -100.0 |
| Special Funds | 57,472 | 59,381 | 1,909 | 3.3 |
| <i>Budget Act Total</i> | <i>57,473</i> | <i>59,381</i> | <i>1,908</i> | <i>3.3</i> |
| Federal Trust Fund | 2,167 | 2,194 | 27 | 1.2 |
| Reimbursements | 479 | 479 | 0 | 0.0 |
| Total | \$60,119 | \$62,054 | \$1,935 | 3.2 |

1. Undercollection of Mill Assessment

Background. California assesses a fee on all pesticides (agricultural and nonagricultural) at the point of first sale in the state. This fee is paid either by the pesticide manufacturer, distributor, or

retailer. The current mill assessment rate is 21 mills (2.1 cents per dollar of sales). Mill assessment revenues are the major source of funding for the state's pesticide regulatory program.

Licensing Requirements. Under current law, all sellers of pesticide products labeled for agricultural use are required to be licensed before they can sell such products in California. In contrast, sellers of pesticide products labeled for use in the home and other nonagricultural settings (consumer pesticides) are not required to be licensed. However, both agricultural and nonagricultural pesticide sellers are required to pay the mill assessment on the first sale in the state. Thus, the requirement to pay the mill assessment is not dependent on the seller being licensed.

Audit Reveals Compliance Problem. The administration recently conducted an audit of a statewide retail chain (Longs Drugs) that sells consumer pesticide products. The department's audit revealed that the mill assessment was not being collected on a substantial amount of the pesticides being sold in the state especially at large retail chains. There is some evidence that unlicensed entities selling pesticides in the state may not be aware that they are required to pay the mill assessment. The administration estimates that the state is not collecting at least \$4 million in mill revenues from unlicensed entities selling pesticide products in the state. However, the undercollection could be significantly more.

Administration's Response to Audit Findings. The administration is sponsoring legislation (AB 1011, Matthews) that would require all sellers of pesticide products labeled for use in the home and other nonagricultural settings (consumer pesticides) to be subject to licensing requirements.

Implementation Concerns. The legislation sponsored by the administration is an important first step in addressing this undercollection of mill revenues. However, staff has identified some concerns related to the implementation of this approach.

First, the enactment of this legislation would greatly expand the number of entities licensed by the department. Additional staffing would be required to support these activities. The LAO has suggested that one option for ensuring the cost-effectiveness of expanding the licensing program would be to limit the licensing requirement to nonagricultural pesticide retailers that meet an annual sales threshold.

Second, the department would need to greatly expand its audit capabilities to ensure compliance in collecting the mill assessment. Large retailers' complex distribution chains are likely to make auditing exceedingly more complex. It is also unclear how larger retail chains will be licensed.

Third, given the scope of nonagricultural pesticides regulated by DPR and the number of retailers that sell these products it may be more cost-effective and easier to pursue alternative methods for collecting the mill on nonagricultural pesticides. An alternative method could include a surcharge at the retail point of sale such as those assessed on beverage containers or certain electronics. This option is similar to legislation proposed in AB 1684 (Klehs).

Implementation Issues Need To Be Addressed. It is unclear whether the administration has explored options for solving the undercollection problem including addressing implementation issues. Staff believes alternative options should be evaluated and that implementation issues should be addressed at some level before a solution is recommended.

Fully Funding State Pesticide Related Activities. Staff finds that there are many state activities outside the department that are pesticide related. Many of these activities are currently supported by the General Fund or other special funding sources and the LAO estimates that these activities total over \$4 million annually. Increased revenues should be used to fully fund all of the state's pesticide related activities.

The LAO suggests that one option for using additional revenues is to restore programs eliminated in previous budget actions, including efforts to improve timely review of pesticides and the environmental review of the health impacts associated with pesticides. The LAO recommends the adoption of supplemental report language to require the department to prepare a report on the different options for expending additional mill fee revenues.

Staff Recommendation. Staff recommends that the Subcommittee keep this issue open and request that the administration report back on the department's rationale for recommending AB 1011 (Matthews) as the solution to the state's undercollection problem. Also, the administration should provide details on how they plan to implement their recommended solution.

2. Shift Pesticides' Risk Assessment Activities

Background. The DPR conducts risk assessments on pesticide ingredients to find out if they are being used in a way that is safe for both users and the general population.

Governor's Budget. The administration proposes providing approximately \$2.9 million for risk assessment activities at the department in the budget year.

Conflicts of Interest. Many concerns have been raised regarding the conflict of interest that arises when both risk assessment and risk management are performed by the same agency. The administration has indicated that they have attempted to make some fundamental changes at DPR to functionally separate the risk assessment activities from the risk management activities. The DPR cites that other state agencies also do both risk management and risk assessment, including the Department of Health Services.

Risk Assessments Lagging. Another concern raised about the department's risk assessment activities is that they have been relatively slow. This is especially of concern in the area of implementation of risk assessment activities related to the Toxic Air Contaminant Act that requires DPR to assess all pesticides as potential air contaminants. Of the 900 pesticide ingredients registered for use in the state, the department has completed Toxic Air Contaminant Act risk assessments for only four of these pesticides. The department indicates that it plans on completing three additional assessments in the upcoming year (sulfuryl fluoride, methidathion, and chloropicrin). The department has indicated that they now include Toxic Air Contaminant Act evaluations of every risk assessment performed on a pesticide. The department has also

indicated that they have recently employed a prioritization process in consultation with the Air Resources Board and the Office of Environmental Health Hazard Assessment (OEHHA).

OEHHA Primary Risk Assessment Branch of Cal-EPA. The OEHHA is the primary environmental health risk assessment branch of the state. Given some of the problems identified regarding the department's risk assessment of pesticide ingredients, OEHHA may be a more appropriate entity for risk assessment of pesticides. This agency does not have specific risk management responsibilities related to pesticides, which reduces the conflicts inherent at the department. Furthermore, it is likely that there will be synergies gained from centralizing the risk assessments related to pesticides with other toxic chemicals in the environment.

Staff Recommendation. Staff recommends adopting placeholder trailer bill language to shift DPR's risk assessment activities to OEHHA.

3940 State Water Resources Control Board

Background. The State Water Resources Control Board (SWRCB), in conjunction with nine semi-autonomous regional boards, regulates water quality in the state. The regional boards—which are funded by the state board and are under the state board's oversight—implement water quality programs in accordance with policies, plans, and standards developed by the state board.

The board carries out its water quality responsibilities by (1) establishing wastewater discharge policies and standards; (2) implementing programs to ensure that the waters of the state are not contaminated by underground or aboveground tanks; and (3) administering state and federal loans and grants to local governments for the construction of wastewater treatment, water reclamation, and storm drainage facilities. Waste discharge permits are issued and enforced mainly by the regional boards, although the state board issues some permits and initiates enforcement actions when deemed necessary.

The state board also administers water rights in the state. It does this by issuing and reviewing permits and licenses to applicants who wish to take water from the state's streams, rivers, and lakes.

Governor's Budget. The Governor's budget proposes \$729 million to support SWRCB in the budget year. This proposal is approximately \$300 million less than current year expenditure levels, mainly due to a reduction in the bond funding available for appropriation. General Fund support for the board is proposed to increase by \$1.4 million in the budget year due to increases related to employee compensation and federally mandated activities related to the cleanup of Leviathan Mine.

| Summary of Expenditures (dollars in thousands) | 2004-05 | 2005-06 | \$ Change | % Change |
|--|--------------------|------------------|-------------------|--------------|
| Type of Expenditure | | | | |
| Water Quality | \$1,023,012 | \$719,206 | -\$303,806 | -29.7 |
| Water Rights | 10,937 | 9,808 | -1,129 | -10.3 |
| Administration | 17,289 | 17,805 | 516 | 3.0 |
| Less distributed administration | -17,289 | -17,805 | -516 | 0.0 |
| Unallocated Reduction | -368 | -454 | -86 | 0.0 |
| Total | \$1,033,581 | \$728,560 | -\$305,021 | -29.5 |
| Funding Source | | | | |
| General Fund | \$27,883 | \$29,236 | \$1,353 | 4.9 |
| Special Funds | 320,470 | 351,177 | 30,707 | 9.6 |
| Bond Funds | 517,723 | 178,292 | -339,431 | -65.6 |
| <i>Budget Act Total</i> | <i>866,076</i> | <i>558,705</i> | <i>-307,371</i> | <i>-35.5</i> |
| Federal Trust Fund | 127,163 | 128,532 | 1,369 | 1.1 |
| Reimbursements | 10,014 | 9,815 | -199 | -2.0 |
| State Water Quality Control Fund | 21,130 | 22,130 | 1,000 | 4.7 |
| State Water Pollution Control Revolving Fund | -2,682 | -2,682 | 0 | 0.0 |
| Petroleum Underground Storage Tank Financing Account | 11,880 | 12,060 | 180 | 1.5 |
| Total | \$1,033,581 | \$728,560 | -\$305,021 | -29.5 |

1. RUST Program

Background. Chapter 624, Statutes of 2004 (AB 1068, Liu) re-established the Repair and Replacement of Underground Storage Tanks (RUST) loan and grant program. This program provides loans to small businesses to repair, replace, or remove petroleum underground storage tanks to meet applicable standards. This program was formally administered by the now defunct Technology, Trade and Commerce Agency. Another piece of legislation enacted in 2004, Chapter 649, Statutes of 2004 (AB 2955, McCarthy), also created a new grant program within RUST to provide funding for certain small businesses to install equipment for long-term leak detection monitoring.

Governor's Budget. The Governor's budget proposes \$560,000 to support 4 new positions and \$11.5 million for loans and grants for 2005-06. This program is funded by a transfer from the Underground Storage Tank Cleanup Fund (USTCF), which is supported by a per gallon fee paid

by all underground storage tank owners. These funds are proposed to allocate new loans and grants and to service 357 existing loans with over \$37 million in principal. Of the total amount proposed for grants and loans, \$3.5 million is proposed to be set aside for new grants under AB 2955.

Staff Recommendation. Staff recommends that the Subcommittee approve this proposal as budgeted.

2. Underground Storage Tank Cleanup Fund Program

Background. The Underground Storage Tank Cleanup Fund program is essentially an insurance program supported by underground storage tank owners who pay a fee to cover clean up of leaky tanks. These funds are deposited into the Underground Storage Tank Cleanup Fund (USTCF) and allocated based on the following set priority ranking:

- Residential tank owners;
- Small businesses, governmental organizations, and nonprofit organizations;
- Businesses, governmental organizations, and nonprofit organizations with fewer than 500 employees; and
- All other entities with more than 500 employees (major oil companies and large local governments).

Chapter 774, Statutes of 2004 (AB 1906, Lowenthal) increases the petroleum tank fee (was \$0.12 per gallon in 2004) that supports the underground storage tank program by \$0.01 per gallon on January 1, 2005. An additional increase of \$0.01 per gallon is slated to go into effect on January 1, 2006. These increases will raise an additional \$8 million in the current year, \$24 million in 2005-06, and \$33 million in 2006-07. This legislation also requires that \$10 million be shifted to an Orphan Subaccount annually to support the cleanup of abandoned Brownfield sites that have been contaminated by petroleum products where there is no financially responsible party. Transfers to the Orphan Subaccount are scheduled to sunset on January 1, 2008 and the entire underground storage tank program is scheduled to sunset in 2011.

Governor's Budget. The Governor's budget has several proposals relating to the Underground Storage Tank Cleanup Fund program.

- **General Staffing Restoration** - \$346,000 from USTCF to support 4 new positions to address increased workload and speed up the amount of time it takes to process applications. Over the past several years, staffing to process claims has been reduced from 73 positions to 59 positions. The payment processing time has subsequently increased from 57 days to 74 days.
- **One-Time Increase in Claims** - \$15 million one-time augmentation from USTCF to expend funds that have been reverted to the fund. These funds were reverted because prior year claims were revised either because claimants did not submit supporting documents, original claims included ineligible costs, or claims were reimbursed by other sources of funding.
- **Implementation of AB 1906** - \$490,000 to support 5.5 new positions to manage the workload associated with processing \$33 million in additional claims related to the

increase in the petroleum fee and to support establishing the \$10 million transfer to a new Orphan Subaccount for Brownfield remediation.

Allocation of Orphan Subaccount Funds Undefined. The administration has indicated that it is currently developing plans for allocating the funds to be transferred to the new Orphan Subaccount within the USTCF. The administration plans to allocate the grant funds on a first-come-first-served basis and is anticipating implementation of a \$1.5 million cap on eligible grant funds per site. This cap amount is consistent with the cap on awards provided through the underground storage tank cleanup fund program. The board proposes to recruit a broad field of applicants that include innocent landowners, developers, local governments and redevelopment agencies, and non-profit organizations.

The first-come-first-served method of allocating these grant funds may not be the best way to allocate funds to the most deserving and needed projects. There is likely to be demand for this money that is considerably more than the relatively modest \$10 million annually provided by AB 1906. Therefore, in order for the best projects to receive awards, not only do additional criteria on the characteristics of the best projects needs to be developed, but a process for selecting these projects also needs to be developed.

Staff Recommendation. Staff recommends that the Subcommittee approve the budget proposals related to the underground storage tank cleanup fund program and direct staff, the LAO, and the administration to develop trailer bill language that provides additional criteria for allocating the Orphan Subaccount funds for Brownfield development.

3. Cruise Ship Waste Discharge Program

Background. Two pieces of legislation were enacted during 2004 that reduce waste discharges into the state's waters from cruise ships. The new laws (AB 2093 [Nakano] and AB 2672 [Simitian]) prohibit the discharge of graywater and sewage from cruise ships into the marine waters of the state. This legislation also allows the SWRCB to assess a civil penalty on those who violate this prohibition.

Governor's Budget. The administration proposes \$80,000 from the General Fund to support 1 new position to prepare an application to the U.S. Environmental Protection Agency to establish a no discharge zone for cruise ships. Once the application is submitted and approved by U.S. EPA the staff will then focus on enforcement activities.

Federal Authorization Needed. The board has received instruction from U.S. EPA that federal authorization is needed to implement these laws. Specifically, as part of this application, the board has to demonstrate why the cruise ships are the only vessels of concern to the state in protecting the state's marine waters. This requirement may result in difficulties related to implementing this law.

Staffing Level Seems Inadequate. The staffing level proposed seems inadequate for effectively enforcing this law. If the federal government approves the state's request to enforce restrictions

on cruise ships, the administration will have to put forward a more detailed plan on how it intends to enforce this law.

Staff Recommendation. Staff recommends that the Subcommittee approve the budget proposal and adopt supplemental report language that requires the board to prepare a report due January 10, 2006. If the state is unable to gain approval from U.S. EPA for its request to regulate the cruise ship's dumping activities in state waters, the report should include suggested law changes that are needed to eliminate the discharging of graywater and sewage sludge into the state's waters. Information should also be provided about funding needs and staffing levels required to implement an effective regulatory program related to discharging in state waters, including coordinating these activities with the activities of the State Lands Commission's Ballast Water Management Program.

4. Brownfield Cleanup

Background. It is estimated that there are between 90,000 and 120,000 Brownfields in California where redevelopment has been delayed due to real or perceived hazardous materials contamination. Contamination at these sites hampers the ability of developer and local governments to capitalize on in-fill development projects that could reduce the urban sprawl that is seriously impacting the state's natural landscapes. Legislation enacted in 2004 (AB 389, Montanez) allows certain persons to obtain liability protection if they purchase and remediate Brownfield properties under the oversight of the Department of Toxic Substances Control or the Water Board. This legislation is likely to increase the number of Brownfield sites that the state will be asked to oversee.

Governor's Budget. The administration proposes additional funding to oversee Brownfield remediation at both the Water Board and DTSC. The Governor proposes to provide \$1.6 million to support 15 new positions at the Water Board and \$1.7 million to support 15 new positions at DTSC. Approximately \$1 million is from the State Water Quality Fund, \$1 million from reimbursements, \$914,000 is proposed from federal funds, and \$200,000 from the Hazardous Waste Control Account. These funds will be used to oversee cleanup of Brownfield properties, including closed military bases.

Two Agencies, Two Processes, One Goal. The DTSC and Water Board's oversight of cleanup activities at Brownfield sites are governed under two different sets of statutes. The DTSC has been overseeing cleanup on Brownfield sites through its Voluntary Cleanup Program since 1993. This program evolved in response to a demand for the state to oversee cleanup of sites that were not "Superfund" caliber sites. The DTSC has certified hundreds of these sites through this program. The Water Board established the Spills, Leaks, Investigations and Cleanup (SLIC) program to provide a framework for recovering the costs related to its regulatory oversight of Brownfield cleanup efforts. The SLIC program has provided oversight to cleanup efforts on over 1,500 sites since 1992.

The two agencies have recently entered into a Brownfield Memorandum of Agreement that establishes procedures for identifying the lead agency on a site, calls for a single site assessment procedure that has yet to be developed, requires opportunities for ample public involvement, and

includes a dispute resolution process in the event of a disagreement between the two agencies. The administration indicates that this agreement will address the problem of forum shopping that has arisen from having two different processes to cleanup contaminated sites. This memorandum also seeks to address the vast differences in public involvement processes at the two agencies. The memorandum specifically sets out minimum standards for public involvement. These standards are relatively minimal and are not as extensive as DTSC's processes under its Voluntary Cleanup Program that are modeled after the federal "Superfund" site guidelines.

The administration's Memorandum of Agreement is a step in the right direction in coordinating and making more consistent the state's assessment and oversight of Brownfield properties. However, it is not clear that the Agreement will be successful in coordinating activities successfully. This sort of coordination effort is significant and takes a significant amount of time on behalf of all of the agencies involved. Statutory change to make the processes more parallel may be a more efficient way of reaching many of the goals of the Memorandum of Agreement.

Funding for Cleanup Needed. The funding and positions provided for oversight of Brownfield cleanup are a critical first step towards increasing the number of Brownfield properties that are restored and reused to help revitalize communities and provide for much needed housing in the state. However, in order to really increase the number of sites cleaned up, public funds to help support cleanup activities where there are no responsible parties, plays an important role. The Governor's budget provides a relatively modest amount to meet this goal (\$10 million) and it is restricted to petroleum related pollution.

Staff Recommendation. Staff recommends that the Subcommittee adopt the Brownfield budget proposals for the Water Board and DTSC and direct staff, LAO, and the administration to work on funding options for Brownfield cleanup in the budget year.

3960 Department of Toxic Substances Control

Background. The Department of Toxic Substances Control (DTSC) regulates hazardous waste management, cleans up or oversees the cleanup of contaminated hazardous waste sites, and promotes the reduction of hazardous waste generation. The department is funded by fees paid by persons that generate, transport, store, treat, or dispose of hazardous wastes; environmental fees levied on most corporations; the General Fund; and federal funds.

Governor's Budget. The Governor's budget proposes \$171 million to support DTSC in 2005-06. This is approximately \$3 million more than estimated for expenditure in the current year. This increase is mainly due to employee compensation and augmentations proposed for the Brownfield reuse program. General Fund support for the department is proposed to decrease by 14 percent mainly due to backing out one-time funding in the current year used to take over operations of a toxic landfill in Southern California.

| Summary of Expenditures (dollars in thousands) | 2004-05 | 2005-06 | \$ Change | % Change |
|--|------------------|------------------|----------------|-------------|
| Type of Expenditure | | | | |
| Site Mitigation and Brownfields Reuse | \$94,123 | \$94,595 | \$472 | 0.5 |
| Hazardous Waste Management | 60,412 | 65,349 | 4,937 | 8.2 |
| Science, Pollution Prevention, and Technology | 12,207 | 10,798 | -1,409 | -11.5 |
| Capital Outlay | 900 | 0 | -900 | -100.0 |
| Administration | 33,520 | 34,572 | 1,052 | 3.1 |
| <i>less distributed administration</i> | <i>-33,520</i> | <i>-34,572</i> | <i>-1,052</i> | <i>0.0</i> |
| Unallocated Reduction | 0 | -143 | -143 | 0.0 |
| Total | \$167,642 | \$170,599 | \$2,957 | 1.8 |
| Funding Source | | | | |
| General Fund | \$21,072 | \$18,186 | -\$2,886 | -13.7 |
| Special Funds | 118,679 | 119,865 | 1,186 | 1.0 |
| <i>Budget Act Total</i> | <i>139,751</i> | <i>138,051</i> | <i>-1,700</i> | <i>-1.2</i> |
| Federal Funds | 21,691 | 24,948 | 3,257 | 15.0 |
| Reimbursements | 8,699 | 9,700 | 1,001 | 11.5 |
| Superfund Bond Trust Fund | -2,500 | -2,100 | 400 | 0.0 |
| Total | \$167,641 | \$170,599 | \$2,958 | 1.8 |

1. Brownfield Cleanup

See discussion under the State Water Resources Control Board.

2. BKK Class I Landfill

Background. The State recently took over operation and maintenance activities related to the BKK Class I (hazardous waste) landfill in West Covina, California when the BKK Corporation informed DTSC that it was on the verge of bankruptcy and would no longer be able to fund post closure obligations. The BKK Corporation is a subsidiary of the Washington Mutual Corporation. The DTSC acted quickly to assume operations of the landfill because of the direct health and safety risks to surrounding communities. In order to fund these activities in the current year, \$7 million General Fund has been approved, including funding for major deferred maintenance projects. The DTSC is currently pursuing potential responsible parties that contributed hazardous waste to this site to seek funding for ongoing operations and maintenance costs associated with this site. However, the State, mainly Caltrans, is a major responsible party that contributed hazardous waste to this site during its years of operation.

Governor's Budget. The Governor's budget does not provide any funding to support post closure operations and maintenance at the BKK landfill in the budget year. The administration indicates that they are considering proposals to continue support for these activities in the budget year for inclusion in the May Revision. However, they are also working hard to pursue funding for ongoing operations and maintenance from the responsible parties that deposited hazardous waste at this site.

Avoiding Stringfellow. The DTSC has indicated that it took action to take over at the BKK landfill site in order to avoid designation as a "Superfund" site. Several years ago the federal government took over operations and maintenance of the Stringfellow Class I landfill in a rural part of Riverside County. The federal government settled with the responsible parties and left the state with a huge bill for ongoing operations and maintenance costs associated with the site. The administration decided that in order to avoid a similar result with the BKK landfill that the state would take over operations of the landfill and drive negotiations with the responsible parties. At this time it is not certain the extent that the state will be able to recover costs from the various responsible parties, including the federal government. Regardless, the state will end up paying some costs, as Caltrans and other state agencies contributed toxic waste to the site.

Avoiding Another BKK Situation. The BKK Corporation has essentially walked away from its obligation to operate and maintain this landfill due to its financial duress. Its lack of ongoing maintenance has also created a significant backlog of maintenance activities that has put the surrounding communities in harm's way for toxic chemical exposure. The DTSC has indicated that because the BKK landfill is relatively old and has been closed since the 1980s, it was not subject to recent laws and regulations that have been put in place to protect the state from this sort of occurrence.

There are 12 other closed Class I landfills in the state and three active landfills. The DTSC indicates that over the last few decades since BKK closed, several preventative measures have

been put in place to reduce the likelihood of similar situations arising at other closed landfills. These measures include:

- More stringent design and construction standards;
- More restrictive treatment standards for the waste disposed of in landfills;
- More stringent closure and post-closure design standards;
- Increased emphasis on financial assurance for post-closure care; and
- Increased enforcement of the standards and assurances listed above.

The state should continue to work on improving standards and financial assurances so that it can minimize the state's financial liability related to ongoing maintenance and operations of these toxic sites. Recovering costs from responsible parties is a long and litigious process that takes significant time and resources. Therefore, the more the state can require financial assurances and other factors that reduce the long-term financial burden of maintaining the sites, the better. All of these toxic landfill sites will need to be managed in perpetuity, with lifetime costs of billions of dollars. The state should also have a plan for reducing the hazardous waste it produces.

Staff Recommendation. Staff recommends that the Subcommittee hold this issue open pending funding proposals from the administration to support operations and maintenance of the BKK landfill in the budget year and submittal of plans for improving financial assurances related to the long-term management of hazardous landfills in order to avoid a BKK-type situation in the future.

3. Mercury Containing Lamps—Informational Item

Background. The DTSC has banned landfill disposal of mercury-containing lamps. However, when this ban was approved, an exemption was made for households and small businesses. This exemption is scheduled to expire next year. Furthermore, large proportions (over 75 percent) of mercury-containing lamps continue to be deposited in landfills.

Questions.

- What steps is the department taking to increase the recycling rate of mercury-containing lamps?
- How does the department intend to deal with the recycling of lamps from households and small businesses after the exemption expires?
- What steps are you taking to encourage the reduction of mercury in lamps?

4. Laboratory Equipment Upgrades

Governor's Budget. The administration proposes \$1 million in special funds to purchase laboratory equipment for the Hazardous Materials Laboratory. This augmentation is part of a several year effort to update outdated, worn out, and obsolete equipment used for chemical analysis and data management. Replacing this equipment will ensure that laboratory capabilities are adequate to support DTSC's needs.

Staff Recommendation. Staff recommends that the Subcommittee approve as budgeted.

5. School Site Assessment

Governor's Budget. The administration proposes \$815,000 from reimbursements to maintain DTSC's current oversight capabilities to review environmental documents for new school sites to ensure the site is free of contamination. Construction on a school cannot begin until DTSC has approved the environmental documents related to the site. The administration also proposes to convert 8 limited-term positions to permanent positions to support this program.

Staff Recommendation. Staff recommends that the Subcommittee approve as budgeted.

6. Certified Appliance Recyclers Program

Governor's Budget. The administration proposes \$50,000 in special funds to hire students to implement legislation from 2004 (AB 2277, Dymally) that creates a program to certify appliance recyclers to ensure that they are removing hazardous materials from the appliance before crushing, baling, or shredding major appliances for shipping to landfills.

Staff Recommendation. Staff recommends that the Subcommittee approve as budgeted.

7. CUPA for Trinity and Imperial Counties

Governor's Budget. The administration proposes \$1.3 million in special funds to support DTSC's role as the Certified Unified Program Agency (CUPA) for Trinity and Imperial counties. These counties do not have local programs, so DTSC will act as the responsible CUPA to consolidate the administration, inspections, and enforcement of the following six environmental programs:

- Hazardous waste generators;
- Spill prevention of above ground storage tanks;
- Underground storage tank program;
- Hazardous materials release response plans;
- California Accidental Release program; and
- Hazardous materials management plans.

Staff Recommendation. Staff recommends that the Subcommittee approve as budgeted.

3980 Office of Environmental Health Hazard Assessment

Background. The Office of Environmental Health Hazard Assessment (OEHHA) identifies and quantifies the health risks of chemicals in the environment. It provides these assessments, along with its recommendations for pollutant standards and health and safety regulations, to the boards and departments in the California Environmental Protection Agency and to other state and local agencies. The OEHHA also provides scientific support to environmental regulatory agencies.

Governor's Budget. The Governor's budget proposes \$14.8 million to support OEHHA in the budget year. This is about the same level of expenditure authority as in the current year. General Fund support for the office is proposed at \$7.9 million, which is slightly more than current-year expenditures due to employee compensation increases and a proposed augmentation to evaluate sensitive subpopulations when developing Public Health Goals.

| Summary of Expenditures | | | | |
|--|-----------------|-----------------|---------------|-------------|
| (dollars in thousands) | 2004-05 | 2005-06 | \$ Change | % Change |
| Type of Expenditure | | | | |
| Health Risk Assessment | \$14,992 | \$14,924 | -\$68 | -0.5 |
| Administration | 2,939 | 2,969 | 30 | 1.0 |
| <i>less distributed administration</i> | -2,939 | -2,969 | -30 | 0.0 |
| Unallocated Reduction | 0 | -122 | -122 | 0.0 |
| Total | \$14,992 | \$14,802 | -\$190 | -1.3 |
| Funding Source | | | | |
| General Fund | \$7,692 | \$7,852 | \$160 | 2.1 |
| Special Funds | 5,117 | 5,308 | 191 | 3.7 |
| <i>Budget Act Total</i> | <i>12,809</i> | <i>13,160</i> | <i>351</i> | <i>2.7</i> |
| Federal Trust Fund | 345 | 0 | -345 | -100.0 |
| Reimbursements | 1,840 | 1,642 | -198 | -10.8 |
| Total | \$14,994 | \$14,802 | -\$192 | -1.3 |

1. Funding Adequacy

Background. Over the past several years, there have been concerns raised by the Legislature regarding the relative instability of OEHHA's funding due to its reliance on the General Fund. In

response to this concern, actions have been taken to shift some of the office's budget to appropriate special fund sources.

Governor's Budget. The Governor's budget proposes that the General Fund support approximately 60 percent of OEHHA's activities and special funds support the remaining 40 percent.

Report Overdue. During 2002 and 2003, legislative hearings raised concerns regarding the instability of OEHHA's funding base and whether OEHHA's funding level was adequate to meet its statutory mandates. As a result, supplemental report language was adopted to direct OEHHA to report on its long-term baseline funding requirements to meet its statutory mandates and specific recommendations regarding the appropriate mix of General Fund and special fund sources. This report was due January 10, 2004, but has not yet been received. It is difficult for the Legislature to determine the adequacy of the office's current funding level in meeting its mandates in absence of this report. The administration has indicated that it is still reviewing this report and may submit its finding in the upcoming month.

Alternative Funding Sources. The LAO has identified three funding sources that would be appropriate to support OEHHA's activities in the budget year. These funding sources are directly linked to activities planned at the office in the budget year. The LAO recommends that the Legislature consider the following funding shifts from the General Fund:

- \$1.5 million – for activities related to supporting the Department of Health Services' safe drinking water program from the Safe Drinking Water Account.
- \$800,000 – for activities related to various air quality regulatory programs from the Air Pollution Control Fund.
- \$500,000 – for activities that support fish contamination evaluation and advisories from the Fish and Game Preservation Fund.

The LAO notes that the Air Pollution Control Fund has a balance that could support this transfer. However, the other two funding sources do not have sufficient balances to support this shift without increases in fees or a redirection of monies from other activities.

Staff Recommendation. Staff recommends that the Subcommittee take action to shift \$800,000 from the Air Pollution Control Fund to support OEHHA's activities. Furthermore, staff recommends that the Subcommittee direct staff and the LAO to review the administration's forthcoming report on the office's funding adequacy for additional funding needs at the office prior to eliminating General Fund support.

2. Technical Budget Adjustment

Technical Budget Adjustment Needed. The LAO finds that the Governor's budget does not reflect a \$750,000 federal grant received in the current and budget year for a two-year pesticide illness reporting improvement project. Approximately \$500,000 is proposed for expenditure in the budget year. The LAO proposes that the Legislature increase OEHHA's federal fund expenditure authority by \$500,000 for the budget year to reflect the receipt of these funds.

Staff Recommendation. Staff recommends that the Subcommittee take action to increase the federal funding expenditure authority by \$500,000 in the budget year to reflect the receipt of the federal grant.